



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 29504778

Date: FEB. 8, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a human rights policy officer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not satisfied any of the ten initial evidentiary criteria, of which she must meet at least three. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

An individual is eligible for the extraordinary ability classification if: they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and, their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner

to submit comparable material if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

The Petitioner claims to have worked as a human rights policy officer in Uruguay, and the record reflects that she co-founded [REDACTED] a non-governmental organization for open government, open data, transparency, freedom of information, and participation using civic technology. The Petitioner intends to continue working in the fields of human rights and technology as a senior program manager in the United States. Since she does not claim to have a one-time achievement, she must submit evidence meeting at least three of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Director denied the petition, concluding that the Petitioner met only two of the claimed criteria: 8 C.F.R. § 204.5(h)(3)(vi), authorship of scholarly articles, and 8 C.F.R. § 204.5(h)(3)(viii), performance in leading or critical roles for organization or establishments that have a distinguished reputation. The record supports the Director's determination that the Petitioner satisfied these two criteria. On appeal, the Petitioner contends that the Director's decision was erroneous, and maintains that she also meets the criteria related to lesser awards, judging the work of others, and original contributions of major significance in the field.<sup>1</sup>

To meet the criterion at 8 C.F.R. § 204.5(h)(3)(iv), a petitioner must show evidence of their participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.<sup>2</sup> The Petitioner claimed eligibility under this criterion based on her service as a juror for [REDACTED] a regional hackathon for developing civic open data-based technology apps organized by non-governmental organizations in multiple Latin American countries, and as a reviewer for the [REDACTED] an annual award given to state or public bodies in Uruguay for excellence at the national level in developing projects, programs, and innovations that promote transparency within the Uruguayan government and society.

In denying the petition, the Director determined that the Petitioner did not satisfy this criterion because she "did not support evidence showing the names of the participants evaluated by [her], their level of expertise, the specific competitive categories [she] judged, and the significance and magnitude of the competition." On appeal, the Petitioner asserts that her evidence in support of this criterion was not

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<sup>1</sup> The Petitioner has not pursued her initial claim that she could satisfy the criterion relating to published materials under 8 C.F.R. § 204.5(h)(3)(iii).

<sup>2</sup> *See generally* 6 *USCIS Policy Manual* F.2 appendix, <https://www.uscis.gov/policymanual>.

properly considered, and argues that the Director's comments constitute "prohibitive novel substantive requirements" that contradict the plain language of the regulation.

Upon review, we agree with the Petitioner's assertions. The Petitioner submitted letters attesting to her service as juror and reviewer for the above competitions, which clearly describe her judging activities and describe with specificity whose work and what type of work she judged. The Petitioner also provided copies of published press releases and articles regarding the nature of these events. In the denial, the Director did not acknowledge these documents or explain why they were insufficient. When denying a petition, the Director must explain in writing the specific reasons for denial. 8 C.F.R. § 103.3(a)(1)(i). This explanation should be sufficient to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See, e.g., Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, the Director's decision did not satisfy this requirement.

In addition to not evaluating the Petitioner's documentary evidence, the Director also concluded that "without independent objective evidence that the activities were consistent with sustained national or international acclaim at the very top level of your field, the evidence contains no probative value." The nature of the Petitioner's judging duties would be a matter for discussion in the final merits determination. As discussed above, where a petitioner provides qualifying evidence satisfying the initial evidentiary criteria, we will determine whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian*, 596 F.3d 1115.

Upon de novo review of the letters and supporting documentation the Petitioner provided, we conclude she established by a preponderance of the evidence that she has judged of the work of others in the same or an allied field of specification for which classification is sought. Therefore, the Petitioner has met the requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(iv).

With eligibility under this additional criterion, the Petitioner satisfied part one of this two-step adjudicative process described in *Kazarian* and has overcome the basis for the denial of her petition. Accordingly, we will withdraw the Director's decision. Because the Petitioner has met the initial evidence requirements of at least three criteria, it is unnecessary to discuss any additional eligibility claims relating to the regulatory provisions at 8 C.F.R. § 204.5(h)(3)(i)-(x). However, granting the third initial criterion does not suffice to establish eligibility for the classification the Petitioner seeks or establish that the record supports the approval of the petition.

USCIS must now determine whether the record establishes sustained national or international acclaim and recognized achievements sufficient to place the Petitioner among the small percentage at the very top of his field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. The Director did not reach that finding, and we decline to make the final merits determination in the first instance. We will therefore remand the matter. On remand, the Director should evaluate the evidence and consider the petition in its entirety, including the evidence submitted on appeal, to make a final merits determination.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.